

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

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:
UNITED STATES OF AMERICA :
:
-vs- : DOCKET NO. 1:09cr47
:
HENRY OBILO, :
:
Defendant. :
:
- - - - - x

District Courtroom 900
United States Courthouse
Alexandria, Virginia

Friday, September 4, 2009

The above-entitled matter came on to be heard before
THE HONORABLE T. S. ELLIS, III, Judge, in and for the
United States District Court for the Eastern District of
Virginia, in the United States Courthouse, Alexandria,
Virginia, beginning at 10:11 o'clock a.m.

APPEARANCES:

On Behalf of the United States:

JOHN EISENGER, ESQUIRE
Assistant United States Attorney

On Behalf of the Defendant:

JOHN O. IWEANOGE, II, ESQUIRE

C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
HADLEY ETIENNE	25	-	-	-

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P R O C E E D I N G S

THE CLERK: Case Number 09-Criminal-47, United States of America versus Henry Obilo.

Will Counsel please state your appearance for the record?

MR. EISENGER: Good morning, Your Honor; John Eisenger.

THE COURT: All right, Mr. Eisenger, you are here for the Government?

MR. EISENGER: Yes, Your Honor.

THE COURT: Mr. Iweanoge, you are here for the Defendant?

MR. IWEANOGE: Yes, Judge. Good morning, Your Honor.

THE COURT: Good morning.

And Mr. Obilo is now present in the Courtroom.

This matter is before the Court for sentencing, this Defendant having been found guilty on the basis of a plea of engaging in a conspiracy to commit bank fraud.

This Defendant engaged with others in obtaining identity information of depositors of various banks, then impersonating these depositors in telephone

1 calls and other communications with banks to require or to
2 request that these banks wire funds to various other bank
3 accounts. This Defendant was involved in making those
4 calls.

5 He also learned this scheme from the
6 individual who is currently the leader and who's currently
7 a fugitive, Mr. Onwuhara, and then he really developed his
8 own side scheme in Miami, on the side.

9 Do I have that about right, Mr. Eisenger?

10 MR. EISENGER: That's correct, Your Honor.

11 THE COURT: And he is before the Court now for
12 sentencing.

13 Mr. Iweanoge?

14 MR. IWEANOGE: Yes, sir?

15 THE COURT: Have you had an adequate
16 opportunity to review the pre-sentence report and to
17 review it with Mr. Obilo, your client?

18 MR. IWEANOGE: Yes, we have, Judge.

19 THE COURT: Mr. Obilo, have you had an
20 adequate opportunity to review the pre-sentence report and
21 to review it with your counsel, Mr. Iweanoge?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And are you fully satisfied with

1 the advice and counsel he has provided to you in this
2 case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right; you may be seated.

5 (The Defendant complied with the request.)

6 THE COURT: Mr. Iweanoge, I have your position
7 paper. The first thing you object to is whether he should
8 be held accountable for \$2.7 million?

9 MR. IWEANOGE: That's correct, Judge.

10 THE COURT: And, Mr. Eisenger, you think he
11 should be held accountable for how much?

12 MR. EISENGER: We believe that he should be
13 held for the \$2.7 million that he was directly responsible
14 for, but we want to note that given his leadership
15 position in this scheme, we feel that he deserves a
16 slightly higher sentence, maybe something at the high end
17 of the guideline range, because of his knowledge of the
18 overall scheme.

19 THE COURT: Well, the overall scheme involved
20 much more than \$2.7 million, didn't it?

21 MR. EISENGER: Correct, Your Honor.

22 THE COURT: How much?

23 MR. EISENGER: The figures we have are just

1 under \$11 million in actual losses and approximately \$36
2 million in attempted losses.

3 THE COURT: And intended losses, of course,
4 are pertinent under the guidelines.

5 MR. EISENGER: Correct, Your Honor.

6 THE COURT: All right.

7 Now, Mr. Iweanoge --

8 MR. IWEANOGE: Yes, Judge.

9 THE COURT: -- you point out that he is
10 charged with more than Onyedebelu, more than Paula Gibson.

11 But their conduct is different, isn't it?

12 MR. IWEANOGE: Judge, not necessarily. The
13 Government sees this case a little different, quite
14 obviously, than I see it, Judge, because I know Your Honor
15 recalls the testimony of the witnesses, including Paula
16 Gibson, who said that "We saw him on two occasions using
17 the laptop."

18 But then, most importantly, Judge, Detective
19 Pak testified in the Government's case, everybody else --
20 there was money coming in either through West Indies or
21 from Djakarta, Indonesia, going to every participant that
22 is charged in this case. The only person they could not
23 trace any money going from any of the co-conspirators to

1 is my client, Mr. Obilo.

2 THE COURT: All right. Let me hear from the
3 Government. We will take these issues one at a time.

4 What is -- before we get to -- actually, Mr.
5 Iweanoge, let me hear also on leadership role from you for
6 your client.

7 MR. IWEANOGE: Judge, my client -- I don't see
8 the facts that makes my client a leader in this
9 enterprise. As a matter of fact, the Government is well
10 aware, during the debriefing sessions with Paula Gibson,
11 Abel Nnabue, Onyedebelu, that testified they were the ones
12 -- if anybody should be getting any leadership role
13 enhancement in this case, it should be either Ezenwa
14 Onyedebelu, who was directly associated with Mr.
15 Onwuhara --

16 THE COURT: What about this whole side -- he
17 had his own operation going in Miami.

18 MR. IWEANOGE: Judge, the Government makes
19 this allegation, that there is something going on in
20 Miami, but that still ties into Onwuhara, and it mentions
21 the name of an individual who is still walking around in
22 Miami, uncharged, in this particular -- uncharged with any
23 offense whatsoever.

1 It defies logic that you have such a credible
2 and reliable case against this alleged individual that is
3 still walking the streets, free, and then if you look at
4 the position --

5 THE COURT: You are talking about Obasuyi?

6 MR. IWEANOGE: Yes, Judge.

7 And then, if you look at the loss calculation,
8 the strangest part is, Judge, that if you look on Page 9
9 of their position, Subparagraph K, after claiming that the
10 attempted loss is 700 then they follow -- it's like they
11 added, "It is unknown if the attempted theft was
12 successful," and then it goes on --

13 THE COURT: Well, you don't have to succeed in
14 order to be charged with the money.

15 MR. IWEANOGE: Absolutely, Judge, and it
16 raises an issue which is implicit. As Lyndon Johnson
17 said, Judge, when a man or woman is talking to you, know
18 what he or she is saying, but what he or she is not
19 saying. If you are not able to confirm if the money
20 actually --

21 THE COURT: Well, you are the first person to
22 have quoted Lyndon Johnson in this courtroom. I hope you
23 are the last.

1 MR. IWEANOGE: Judge, I guess I will choose
2 Ronald Reagan.

3 THE COURT: Stick with Abraham Lincoln.

4 MR. IWEANOGE: Okay, Judge, I will stick with
5 Abraham Lincoln, Judge.

6 But right makes right, and in that frame let
7 us to do our duty as we understand it. If the Government
8 does its duty as they understand it Judge, they would not
9 be unsure if the attempt was successful or not successful,
10 because for you to claim that the amount is the loss
11 amount attributable to my client, then you should be in a
12 position to tell the Court if it was successful or not
13 successful.

14 But then it goes on to the next paragraph
15 which is J, Judge, still on Page 9. "A third cannot be
16 confirmed. It is believed this was the attempted
17 transfer."

18 In other words, what we have is conjecture,
19 allegations, but there is not proof to back it up.

20 Then you go to H. Authorities believe that
21 all of this money was withdrawn. It has not been
22 confirmed.

23 And then, Judge, like the leadership role that

1 the Government claims is -- the testimony of Abel Nnabue
2 was he saw my client on two occasions using the laptop,
3 and then the Government attaches an interview of my client
4 coming back from Nigeria that Paula Gibson told them at
5 the debriefing he was with them, hanging out.

6 Then Abel Nnabue, on cross examination, when
7 he said that in December that my client -- he saw him in
8 December, working on a laptop, and then I said, "Isn't it
9 true that in December, he was in Nigeria? He wasn't even
10 here?"

11 And then he said, "Oh, yeah, yeah, yeah, yeah.
12 He was in Nigeria."

13 Suffice it to say, without re-litigating the
14 case, Judge, if you have the leadership role, it is
15 amazing that Abel Nnabue orchestrated what happened here
16 in the Eastern District of Virginia, was once they were
17 receiving funds, how can you be a leader, organizer, or
18 manager or supervisor, but then you're not getting paid?

19 Even Brandy Anderson, Abel Nnabue's girlfriend
20 or fiancée or wife, Judge -- I have forgotten -- even got
21 \$25,000 on one occasion and on another I believe \$10,000
22 or so. And Your Honor took into consideration her limited
23 role in giving her a sentence that is different from the

1 other defendants.

2 But then here you have the detective, the lead
3 detective in this case, saying that no money is traceable
4 to my client. So, what leadership role could he assume or
5 be in and then he is not entitled to money or calling
6 shots?

7 So, Judge, I don't see the leadership role
8 enhancement in this particular case because there is
9 nothing about the testimony that was presented to this
10 Court that shows that he assumed or ever exercised any
11 money -- direct control over any money.

12 THE COURT: You also object to the number of
13 victims for the same reasons?

14 MR. IWEANOGE: Judge, I objected -- to be
15 candid with the Court, I objected to the number of
16 victims, and in reading the Government's position with
17 respect to the sentencing in this case, Judge, I will not
18 have credibility to stand before Your Honor, knowing that
19 the other Plea Agreements as the Government points out
20 that I am arguing to be in disparity with what the
21 Government is seeking in this case, that there were ten or
22 more victims in those particular cases as well. And in
23 addition to that, Judge, that the sophisticated means was

1 also attributed to the other defendants.

2 So, I cannot have the credibility to stand
3 before Your Honor and oppose --

4 THE COURT: What about the obstruction of
5 justice?

6 MR. IWEANOGE: Judge, the obstruction of
7 justice, I still oppose, Judge. The reason that I oppose
8 the obstruction of justice, Judge, that -- just like
9 somebody walking in from England and saying "to-mah-to,"
10 and then an American saying, "to-may-to" -- Judge, at the
11 end of the day, they are saying the same thing, but then
12 with a different accent.

13 What I mean by that is, Judge, that we have a
14 situation where there was a conversation allegedly between
15 two people. What is not in contention is how it
16 transpired. My client is in New York. Mr. Onyedebelu is
17 in Dallas, Texas. My client, who knows his number, who's
18 trying to intimidate and threaten and cause him not to
19 testify in this case, did not pick up the phone to call
20 him.

21 As a matter of fact, to the contrary, the
22 Government was advised at a debriefing of Onyedebelu --

23 THE COURT: So there is really a conflict

1 between Onyedebelu's version of that event and your
2 client's version.

3 MR. IWEANOGE: Judge, yes. The only place
4 that they differ and which I will argue to the Court is
5 not material is in respect to what was said. As the Court
6 is well aware, Mr. Onyedebelu is the same individual -- in
7 other words, the Government is arguing and asking the
8 Court that the Court should credit his own account of what
9 happened, as opposed to that of my client.

10 And then the very reason is because he is --
11 it's like I could find no other reason other than because
12 he is cooperating with the Government, to which I said to
13 them, Judge, in my position papers, "This is the same
14 individual that you were talking to that was speaking with
15 Onwuhara for quite an extended period of time after he
16 started cooperating with you and never brought that to
17 your attention."

18 So, it's not like he has the best credibility
19 to be put up against my client to have him or have this
20 Court believe his account of what happened.

21 And as the Government may argue when they
22 stand up, because a jury convicted him -- Judge, but even
23 a jury convicting him has nothing to do with whether the

1 jury believed that account.

2 But then most importantly in that regard,
3 Judge, if I may, is that what defies logic in Mr.
4 Onyedebelu's theory of what was said is my client said to
5 me, "Are you going to be testifying against me?" and then
6 to which he says "No."

7 And then he says, "If you are not going to
8 testify against me, then I will not be found guilty."

9 Judge, that doesn't even make sense. The
10 reason is, the Government has a Plea Agreement and
11 cooperation with Precious Matthews, Abel Nnabue, Ms.
12 Gibson, and then it is like there is nothing that Mr.
13 Onyedebelu testified to on the stand under oath that the
14 other people did not testify to.

15 So there was -- it's like it defies logic that
16 somebody would say that if he doesn't testify, "then I
17 will not be found guilty," knowing the extreme line of
18 people who have pled guilty with cooperation and agreement
19 with the Government, and that these people are at the beck
20 and call of the Government to testify. So it doesn't make
21 sense that my client would say, "Okay, if you are not
22 going to testify -- "

23 THE COURT: It doesn't make sense that they

1 commit crimes, either, but they do.

2 MR. IWEANOGE: Absolutely, Judge.

3 THE COURT: So, the argument that it doesn't
4 make sense doesn't make sense.

5 MR. IWEANOGE: Yes, Judge. In that regard,
6 Judge, it should be tipped in this case in favor of the
7 Defendant, because the only other person that could have
8 told us what was talked about, at least the present sense
9 impression of Mr. -- I think it is --

10 THE COURT: I think the answer is that there
11 is a conflict between Onyedebelu and Obilo.

12 MR. IWEANOGE: Yes, Judge.

13 THE COURT: And I have to make that judgment.

14 MR. IWEANOGE: Yes, Judge.

15 THE COURT: All right.

16 MR. IWEANOGE: I ask the Court to also take
17 into consideration in making that judgment that when my
18 client appeared before Your Honor for that hearing, he had
19 a choice not to take the stand, but he wanted to recount
20 for the Court what happened, not only about that but also
21 with respect to the driver's license which the Government
22 claimed that was an issue.

23 And if Your Honor also recalls at the April 1

1 hearing, the Government even wanted you to also revoke him
2 for talking to Chikezie Onwumere, whose case was
3 dismissed, and Your Honor said, "How can he not talk to
4 somebody who is not even a co-defendant in the case?"

5 So, I ask that the obstruction should be
6 resolved in favor of the client.

7 THE COURT: All right.

8 That covers all of the objections, doesn't it,
9 Mr. Iweanoge?

10 MR. IWEANOGE: Just one moment.

11 (Mr. Iweanoge examined a document.)

12 Restitution. I believe that the only other
13 issue is the restitution, Judge, but I guess --

14 THE COURT: All right. That will be taken
15 care of, I think, when I determine what he should be
16 charged with.

17 Mr. Eisenger, I have your brief as well. With
18 respect to the amounts that he should be charged with as
19 either directly or part of the conspiracy, reasonably
20 foreseeable or intended loss, you set out in your brief a
21 number of these that add up to \$2.7 million.

22 MR. EISENGER: Correct.

23 THE COURT: Now, some of this is already in

1 the trial record, but some is not.

2 MR. EISENGER: Correct, Your Honor.

3 THE COURT: Do you have evidence today that I
4 need to hear?

5 MR. EISENGER: I can get an agent to testify
6 about those losses, if you would like.

7 THE COURT: Is he here?

8 MR. EISENGER: Yes, he is, Your Honor.

9 THE COURT: Well, I think that's necessary.
10 Let me deal with other matters. So, I will
11 hear that evidence first.

12 I am going to overrule the objection as to
13 victims and sophisticated means. I think the Probation
14 Officer's conclusion in that regard is correct.

15 I am also going to overrule the obstruction of
16 justice objection. I heard the testimony of Mr. Obilo and
17 Mr. Onyedebelu. I find the testimony about this encounter
18 by Mr. Onyedebelu to be more credible, Mr. Obilo's to be
19 not credible, and therefore I find that incident is an
20 incident that qualifies, under 3C1.14, an obstruction of
21 justice enhancement.

22 I don't rely on his being untruthful to the
23 pre-trial services officer or to the agents about his use

1 of drugs or alcohol. I don't rely on that.

2 I do rely on his testimony under oath during
3 his supervised release hearing in April, and I think that
4 was untruthful. I think Mr. Onyedebelu had it right, and
5 I think there was corroboration of that as well from the
6 agent.

7 In any event, even without that, I find Mr.
8 Onyedebelu's version of the events to be a truthful
9 statement of what occurred.

10 So, that leaves us now with both restitution
11 and the amount for which he should be charged.

12 Let's turn to your brief for a moment so that
13 we are clear, and we can move this matter along.

14 MR. EISENGER: The results of the restitution
15 -- I'm sorry. The results of the leadership role, Your
16 Honor?

17 THE COURT: Oh, yes. The leadership role
18 largely comes out of not just his role in the Onwuhara
19 matter, but in his side operation.

20 MR. EISENGER: Correct, Your Honor.

21 THE COURT: Although he did pay Onwuhara some
22 money out of that as well, didn't he?

23 MR. EISENGER: Correct, Your Honor, and part

1 of our argument is that he's keeping approximately seventy
2 percent of those profits.

3 THE COURT: And thirty percent went to
4 Onwuhara?

5 MR. EISENGER: Correct, Your Honor. For most
6 of the other defendants, we are looking at something like
7 ten percent for Paula Gibson, or maybe thirty to fifty
8 percent for people like Abel Nnabue or Ezenwa Onyedebelu.

9 THE COURT: What is the -- where is Obasuyi?

10 MR. EISENGER: He is the co-leader with Mr.
11 Obilo. He was originally charged in this District, but
12 based on the amount of information we had tying him to
13 Onwuhara, most of that came through Mr. Obilo, so we
14 decided to drop the charges here, awaiting the verdict and
15 the sentencing here, and then we are going to bring the
16 charges on both him and Mr. Obilo down in Miami for a side
17 deal.

18 THE COURT: That is, the fact that they were
19 operating this other scheme down there, with thirty
20 percent of it going to Onwuhara?

21 MR. EISENGER: Correct, Your Honor.

22 THE COURT: Now, he clearly was a leader
23 there.

1 MR. EISENGER: Yes, Your Honor.

2 THE COURT: Do you contend he was a leader in
3 the operation that he was tried for here?

4 MR. EISENGER: We believe that he was getting
5 more money than the other defendants in this case, and
6 that is what Onyedebelu testified to at trial, that he was
7 getting the seventy percent, and that essentially he was
8 just getting Social Security information from Onwuhara.

9 THE COURT: That was his specialty, was to get
10 the identifiers, the Social Security information, and
11 provide that to the conspirators.

12 MR. EISENGER: Correct, Your Honor.

13 And the issue of the money -- the problem
14 there is that we simply don't have bank account
15 information for Mr. Obilo. A lot of his side deals that
16 were going on against Bank of America, the money wasn't
17 being shipped overseas like it was in our case, but,
18 instead, they were pulling it out of debit cards at \$7,500
19 or more a day. So, the money wasn't shipped someplace and
20 going back from Djakarta to Mr. Obilo. Instead, he was
21 pulling it directly out of bank accounts and then shipping
22 some of it, via his courier, which was Onyedebelu, back to
23 Onwuhara, or vice versa.

1 THE COURT: So, distilled to its essence, what
2 is the Government's contention with respect to the three-
3 or four-level enhancement he should receive for a
4 leadership role?

5 MR. EISENGER: Well, Your Honor, we believe
6 that Onwuhara deserves the four points, that he was an
7 overall leader of this conspiracy in Dallas; that there's
8 other people in the country, including one who is
9 currently being prosecuted by the New Jersey prosecutor,
10 that were also at that same level, but that Mr. Obilo was
11 a little bit lower than that. He relied on Mr. Onwuhara
12 for information, but otherwise ran his own scheme, and
13 therefore, that he should get the three points rather than
14 the four points.

15 And that's the same reason we feel that
16 although -- because he was more aware of the depth of this
17 scheme, that he should be held accountable for the high
18 end of the guideline range, but he shouldn't be held
19 accountable for the relevant conduct of everyone in this
20 conspiracy, including Onwuhara, which would give him the
21 overall losses of more than \$10 million and overall
22 attempted losses of more than \$30 million.

23 THE COURT: All right. I am going to hear

1 testimony in this, but I am going to pass it for the
2 moment and then hear testimony. You have one agent?

3 MR. EISENGER: Correct, Your Honor.

4 THE COURT: And if I look at your brief,
5 you've got losses identified in Subparagraphs A through --

6 MR. EISENGER: K, I believe, Your Honor.

7 THE COURT: A through K.

8 Now, when we reconvene this matter, I am going
9 to ask you which of those matters I heard testimony on at
10 trial and which the agent is going to address. Or, can
11 you tell me that now?

12 MR. EISENGER: I can go through those now,
13 Your Honor.

14 THE COURT: All right.

15 MR. EISENGER: Under A, this was a SpoofCard
16 call that was played at trial.

17 THE COURT: All right.

18 MR. EISENGER: Oh, I'm sorry; it's a SpoofCard
19 call wasn't played at trial. A and B were both SpoofCard
20 calls that were part of this conspiracy but were not
21 played at trial.

22 C was not.

23 THE COURT: But the agent who is testifying

1 will have heard all of this?

2 MR. EISENGER: Correct, Your Honor.

3 THE COURT: And how can the agent testify that
4 it is Obilo?

5 MR. EISENGER: Because the agent was actually
6 at JFK during the interview with Obilo and recognized his
7 voice, in the same way that Detective Pak was able to
8 identify his voice.

9 THE COURT: What is the name of the agent you
10 are going to produce?

11 MR. EISENGER: Hadley Etienne. He's a Special
12 Agent for the FBI.

13 THE COURT: And did he testify at trial?

14 MR. EISENGER: No, he did not, Your Honor.

15 THE COURT: But I take it he was present?

16 MR. EISENGER: Yes, he was, Your Honor.

17 THE COURT: Let me do some other matters. Go
18 through A through K after the recess and tell me which of
19 those were heard at trial and which were not. It may be
20 that all of them will be -- I will need to hear evidence
21 on all of them.

22 MR. EISENGER: Yes; there's only two of them
23 that were actually heard at trial, Your Honor.

1 THE COURT: All right. Let me pass this
2 matter.

3 (Whereupon, at approximately 10:34 o'clock
4 a.m., the hearing in the above-entitled matter was
5 recessed, to reconvene at approximately 12:20 o'clock p.m.
6 that same day.)

7 THE COURT: Call the Obilo matter.

8 THE CLERK: Case Number 09-Criminal-47, United
9 States of America versus Henry Obilo.

10 MR. EISENGER: Good afternoon, Your Honor.
11 John Eisenger for the United States.

12 THE COURT: All right, Mr. Eisenger, you are
13 here on behalf of the Government.

14 Mr. Iweanoge, you are here for the Defendant.

15 Mr. Obilo is back in the courtroom.

16 MR. IWEANOGE: Yes, Your Honor.

17 THE COURT: How many witnesses do you plan to
18 present?

19 MR. EISENGER: Just one, Your Honor.

20 THE COURT: All right; call that witness.

21 MR. EISENGER: The Government calls Hadley
22 Etienne, Special Agent of the FBI.

23 THE COURT: All right; come forward and take

1 the oath, please, sir.

2 (The witness was then duly sworn by the Clerk
3 of the Court.)

4 THE COURT: All right, sir; take the stand.

5 (The witness complied with the request.)

6 THE COURT: Mr. Eisenger, you may proceed.

7 Whereupon

8 HADLEY ETIENNE

9 a witness, was called for examination by counsel on behalf
10 of the United States of America, and, having been duly
11 sworn by the Clerk of the Court, was examined and
12 testified, as follows:

13 DIRECT EXAMINATION

14 BY MR. EISENGER:

15 Q Will you please state your name and spell your
16 last name for the record.

17 A First name is Hadley. My last name is
18 Etienne, E-t-I-e-n-n-e.

19 Q How are you employed?

20 A I am employed as a Special Agent with the FBI.

21 Q And are you one of the case agents on this
22 case?

23 A Yes, sir.

1 THE COURT: How long have you been an FBI
2 agent?

3 THE WITNESS: Four-and-a-half years.

4 THE COURT: Thank you.

5 THE WITNESS: Thank you, sir.

6 THE COURT: Next question.

7 BY MR. EISENGER:

8 Q Are you familiar with the Government's
9 position on sentencing in this case?

10 A Yes, sir.

11 Q Can you talk to us about what is in Paragraph
12 A, discussing a SpoofCard call to the account of T.N.
13 Associates on or about December 10th of 2007?

14 A Yes, sir. In that particular call, if I
15 remember correctly, it was a call placed through the
16 SpoofCard service where a voice we identified as belonging
17 to Henry Obilo impersonated a Bank of America employee to
18 facilitate the transfer of monies between accounts for the
19 victim.

20 Q How do you recognize Mr. Obilo's voice?

21 A I recognize Mr. Obilo's voice from the
22 interview that started at JFK Airport, and also interviews
23 where I heard his voice during the arrest in Miami,

1 Florida.

2 Q Were you present at his arrest in 2008?

3 A Yes, sir.

4 Q In the second paragraph, we have another
5 SpoofCard recording of the account of P.R., on or about
6 December 19th, 2007.

7 Were you also able to identify Mr. Obilo's
8 voice on that call?

9 A Yes, sir.

10 THE COURT: Now, just so that I am clear, a
11 SpoofCard, Agent Etienne, is a card that you can buy and
12 use with a cell phone that, when you make a call, you can
13 require or you can have a specific number appear on the
14 Caller ID of the recipient --

15 THE WITNESS: Yes, sir.

16 THE COURT: -- indicating that you are making
17 the call from that number when, in fact, you are using a
18 SpoofCard and a cell phone that isn't really that number.

19 Am I right?

20 THE WITNESS: Yes, sir.

21 THE COURT: Next question.

22 BY MR. EISENGER:

23 Q And Paragraph C relates to a cooperating

1 witness who told agents about an attempt by Mr. Obasuyi
2 from USAA Bank.

3 Can you relate what happened in that case?

4 A Yes, sir. In that particular case, we had a
5 cooperating witness that had been providing ongoing
6 information on this case.

7 MR. IWEANOGE: Judge, I am going to object as
8 to the double hearsay.

9 THE COURT: Overruled.

10 Go ahead.

11 THE WITNESS: In that testimony, that witness
12 related to the FBI that Henry Obilo and Charles Obasuyi
13 were working on a transaction where they were attempting
14 to wire \$800,000 from a USAA account.

15 When we contacted USAA with the date range for
16 that particular transaction, they were immediately able to
17 find that attempted wiring from that account at USAA.

18 THE COURT: All right.

19 How much money?

20 THE WITNESS: If I remember correctly, it was
21 \$800,000.

22 BY MR. EISENGER:

23 Q I think we have listed \$80,000 to \$100,000.

1 A \$80,000 to \$100,000. I apologize.

2 MR. IWEANOGE: Leading, Your Honor.

3 THE COURT: I beg your pardon?

4 MR. IWEANOGE: I was going to object, but it
5 is already -- I'll withdraw that.

6 THE COURT: Did you interview the cooperating
7 witness?

8 THE WITNESS: Yes.

9 THE COURT: What was it that the cooperating
10 witness told you?

11 THE WITNESS: He said that, in his presence,
12 he heard Henry Obilo talking with Tobechei Onwuhara and
13 other members of the group about the transaction that
14 they'd tried or attempted with the USAA bank account to
15 wire that money from the account.

16 THE COURT: Was it unsuccessful?

17 THE WITNESS: That is correct.

18 THE COURT: Did you or the FBI make an
19 assessment as to the reliability of this cooperating
20 witness?

21 THE WITNESS: Yes, sir.

22 THE COURT: Did he testify at any trials?

23 THE WITNESS: No, sir.

1 THE COURT: And -- just a moment.

2 (Pause.)

3 Was the transfer of funds from that account
4 ultimately successful?

5 THE WITNESS: No, sir. It was an attempted;
6 it was not successful.

7 THE COURT: Well, later on, did they try
8 again?

9 THE WITNESS: For that particular transaction,
10 Your Honor, I don't recall it being successful at USAA.

11 THE COURT: All right.

12 Next question.

13 BY MR. EISENGER:

14 Q Was this the one in which they later talked to
15 Mr. Onwuhara and requested his assistance?

16 MR. IWEANOGE: Objection, Judge; leading.

17 THE COURT: It is leading, but -- I will
18 overrule it, but your point, Mr. Iweanoge, is taken; that
19 is, that he needed his memory refreshed by the leading
20 question, so I will take that into account.

21 Go ahead; what is your answer?

22 THE WITNESS: There was an instance, the CW
23 did inform us, where Obilo's group did attempt to do a

1 wire transfer that was unsuccessful, and then they met
2 with Tobechi Onwuhara and he did assist them in then
3 completing that wire transfer at a later date.

4 THE COURT: And is that the one you have been
5 talking about?

6 THE WITNESS: I'd have to look at my notes
7 again to refresh -- to make sure that that was that exact
8 transfer.

9 THE COURT: Do you have the notes here?

10 THE WITNESS: Yes, I do.

11 THE COURT: All right; let's have those notes.
12 You may use them to refresh your recollection, if you need
13 to.

14 Are these notes of your interview of CW-3?

15 THE WITNESS: Yes.

16 (A spectator handed documents to the witness
17 for his examination.)

18 THE WITNESS: Thank you.

19 THE COURT: Is there a 302 relating to that?

20 MR. EISENGER: There was a 302 relating to
21 that, but I'm not sure that he has it.

22 THE COURT: Has it been provided to Mr.
23 Iweanoge?

1 MR. EISENGER: I believe that one has been
2 provided to Mr. Iweanoge, yes.

3 THE COURT: Because that was in the case?

4 MR. EISENGER: I don't believe this one is
5 actually involved in the case because it was --

6 THE COURT: Don't nod or shake your head, Mr.
7 Iweanoge. It interrupts the reader and it is irritating.

8 MR. IWEANOGE: I apologize, Your Honor.

9 THE COURT: I was never able to refrain from
10 doing it, but I certainly expect lawyers to do it now.

11 MR. EISENGER: This was not one of the
12 witnesses at the trial, and it related mostly to Mr.
13 Obasuyi, so I am not sure that it was actually provided to
14 him or not. I know we provided a great number of 302s in
15 our discovery packet, to him and to earlier counsel.

16 THE COURT: All right. Go on.

17 Next question?

18 BY MR. EISENGER:

19 Q Was there eventually payment made to Mr. Obilo
20 or Mr. Obasuyi for this account?

21 A Yes.

22 Q How much was that payment?

23 A May I look at my notes again?

1 THE COURT: Yes, you may, if you need to look
2 at your notes to refresh your recollection.

3 Is your note a 302?

4 THE WITNESS: It is a summary of my 302, sir.

5 THE COURT: All right; go on.

6 THE WITNESS: (Examining his file.)

7 THE COURT: Do you have this 302 here, Mr.
8 Eisenger?

9 MR. EISENGER: I don't have it with me. I
10 could get it, Your Honor.

11 THE COURT: Can you send somebody who is
12 sitting here to go get it?

13 MR. EISENGER: I could try.

14 (Mr. Eisenger conferred with a spectator, off
15 the record.)

16 THE COURT: All right; go on.

17 BY MR. EISENGER:

18 Q In Paragraph D, it talks about the access of
19 accounts from a Bank of America account on line.

20 Can you talk about the first one of those,
21 involving the account of R.F.?

22 A Yes, sir. Bank records show that the victim's
23 account was accessed from a static IP address registered

1 with Comcast that belonged to the subject, Charles
2 Obasuyi. That IP address was not only used to access
3 Charles Obasuyi's bank account, but also the victim's bank
4 account.

5 Q And at the time of this, was Mr. Obilo living
6 with Mr. Obasuyi?

7 A Yes, sir.

8 Q And relating to Paragraph E, that is another
9 transaction in which -- it was the account of E.P., Inc.

10 A The same information was also uncovered by the
11 investigators at Bank of America, where it noted that the
12 IP address belonging to the residence and registered to
13 Charles Obasuyi was used to then check Charles Obasuyi's
14 bank account and also, on the same day, the bank account
15 of the victim.

16 Q And then, in Paragraph F, I believe it is
17 supposed to say September 11, 2007 -- that is a typo on my
18 part -- but accessing the accounts of A.F. and also J.S.

19 Can you talk about that?

20 A Yes, sir. Again on that occasion, the Comcast
21 subscriber information, if I am correct, was utilized to
22 access the victim's account. Monies was transferred from
23 one victim's account into a second victim's account, and

1 then that money was then distributed out through bank
2 cards.

3 Q Was all the money taken out?

4 A No, sir.

5 THE COURT: How do you know that in these
6 situations where it shows an IP address to Obasuyi that
7 Obilo was involved, other than the fact that they were
8 living together?

9 THE WITNESS: The investigators at the Bank of
10 America simply tied those IP addresses and the fact that
11 the accounts were compromised or utilized from that same
12 IP address. That's the only information I have.

13 THE COURT: What evidence do you have that he
14 and Obasuyi were in a conspiracy?

15 MR. EISENGER: We can talk to that as well,
16 Your Honor.

17 THE COURT: With this agent or with other
18 agents?

19 MR. EISENGER: This agent, Your Honor.

20 THE COURT: Well, let's get to that. That's
21 the question I just asked him, and he didn't answer it.

22 BY MR. EISENGER:

23 Q Are you familiar with Charles Obasuyi --

1 THE COURT: I think this might require, Mr.
2 Eisenger, some -- I think you need to give Mr. Iweanoge
3 the 302s, and I need to hear this thoroughly. If it takes
4 more than one agent, it takes more than one agent, but I
5 can't do it today.

6 MR. EISENGER: Okay, Your Honor.

7 THE COURT: So, we are going to do it next
8 week at -- next week at 2:00 o'clock.

9 MR. IWEANOGE: I'm sorry, Judge? On 9/11,
10 Your Honor?

11 THE COURT: No, no, it's not 9/11. Oh, I'm
12 sorry.

13 MR. IWEANOGE: No, that's fine, Judge. I'm
14 actually here in this courthouse on another matter. I was
15 just --

16 THE COURT: You're right. It is 9/11 and I
17 was going to hear it at 2:00 o'clock.

18 MR. IWEANOGE: That's fine, Judge. I just
19 wanted to make sure that I write down the correct date.

20 THE COURT: So as many witnesses as you need,
21 because I want proof, if you've got it, that he had this
22 operation going. And hearsay is admissible; however, I
23 have to make judgments about the quality of the hearsay.

1 You've got now testimony from a confidential
2 witness or confidential informant. I need to know how I
3 can make a judgment about the credibility of that
4 information.

5 I have already ruled on everything but the
6 amount, I believe, and the leadership -- what role. So,
7 that's what I want to hear evidence on, and as thoroughly
8 as you can produce it, because this is likely to be --

9 And I also have these letters, which I will
10 make a part of the pre-sentence report, relating to Mr.
11 Obilo, which I have read. But we need to hear thorough
12 evidence on this.

13 All right, Agent Etienne, you may step down.

14 THE WITNESS: Thank you, sir.

15 | (Witness stood aside.)

16 THE COURT: And I will hear further on this a
17 week from today at 2:00 o'clock.

18 You may bring whatever evidence you have, as
19 well. Are you going to put on your client?

20 MR. IWEANOGE: Judge, I may or may not.

21 But, for the record, Judge, in case they are
22 not able to appear at the next hearing, the mom, my
23 client's mom -- if you could stand up.

1 (A spectator complied with the request.)

2 MR. IWEANOGE: My client's mom and the sister
3 are here from New York and from Dallas as well. In case
4 they are not able to be here next week --

5 THE COURT: Good afternoon. I am sorry we
6 didn't get to it today. I have read your letter. I am
7 now looking at, I believe, Mr. Obilo's mother.

8 MR. IWEANOGE: Yes, Judge.

9 THE COURT: And you need to be supplied with
10 some facts, because your letter says he really was in
11 Nigeria for most of this time, and you can't believe that
12 he did these things.

13 The jury found that he did, on a lot of
14 evidence, and you should ask Mr. Iweanoge about what
15 evidence was presented and what defenses were presented.
16 So, you need to have a full understanding of the case.

17 And what I want you to rest assured about is
18 that it has been thoroughly tried and I am going to very
19 carefully consider what sentence he should receive, and in
20 doing so, I will take into account your letter.

21 THE SPECTATOR: (Nodding head.)

22 THE COURT: All right?

23 THE SPECTATOR: Yes, sir.

1 THE COURT: All right. We will reconvene at
2 2:00 o'clock next Friday.

3 MR. IWEANOGE: Thank you, Judge.

4 *****

5 (Whereupon, at approximately 12:34 o'clock p.m., the
6 hearing in the above-entitled matter was recessed, to
7 reconvene on Friday, September 11, 2009, at 2:00 o'clock
8 p.m.)
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CERTIFICATE OF COURT REPORTER

I, SUSAN K. GREEN, a Certified Verbatim Reporter, do hereby certify that I took the stenographic notes of the foregoing proceedings and thereafter reduced the same to typewriting; that the foregoing is a true record of said proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

/s/

SUSAN K. GREEN, CVR-CM-GNSC-HM
Certified Court Reporter
VCRA Cert. No. 0324104